

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR, DEPARTMENT OF)	
INSURANCE, FINANCIAL INSTITUTIONS)	
AND PROFESSIONAL REGISTRATION,)	
)	
Petitioner,)	
)	
vs.)	No. 12-2135 DI
)	
DAVID FAIR,)	
)	
Respondent.)	

DECISION

We find that the Director of Insurance, Financial Institutions and Professional Registration (“the Director”) has cause to discipline the motor vehicle extended service contract producer license (“license”) of David Fair.

Procedure

On December 4, 2012, the Director filed a complaint with this Commission seeking to discipline David Fair’s (“Fair”) license. We sent Fair our notice of complaint/notice of hearing on December 6, 2012. Fair filed his answer on January 11, 2013. The Director filed a motion for summary decision on February 20, 2013. We gave Fair until March 11, 2013 to file a response, but he did not do so.

Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts that Fair does not dispute and that entitle the Director to a favorable decision. The parties may establish facts through admissible evidence.¹

By failing to respond to the Director's motion, Fair has not disputed the evidence the Director submitted in support of the motion. That evidence includes certified copies of court records and the Director's authenticated records. Therefore, we make our findings of fact from the undisputed evidence submitted by the Director in support of his motion.

Findings of Fact

Fair's Criminal History

1. Fair pled guilty to the following felonies in the Circuit Court of St. Charles County and received the following sentences:
 - a. Sale of a controlled substance (methamphetamine)² on July 29, 2003 (class B felony), ten years in the Missouri Department of Corrections;
 - b. First-degree drug trafficking (methamphetamine)³ on August 20, 2003 (class A felony), ten years in the Missouri Department of Corrections;
 - c. Possession of a chemical with the intent to create a controlled substance (methamphetamine)⁴ on August 20, 2003 (class C felony), five years in the Missouri Department of Corrections;
 - d. First-degree endangering the welfare of a child⁵ on August 20, 2003 (class C felony), five years in the Missouri Department of Corrections;

¹ 1 CSR 15-3.446(6)(B).

² § 195.211. Statutory citations are to RSMo 2000 unless otherwise indicated.

³ § 195.222.8(1), RSMo Supp. 2002.

⁴ § 195.420.

⁵ § 568.045, RSMo Supp. 2004.

- e. Possession of a controlled substance (methamphetamine)⁶ on August 20, 2003 (class C felony), five years in the Missouri Department of Corrections;
 - f. Unlawful use of drug paraphernalia⁷ on August 20, 2003 (class D felony), four years in the Missouri Department of Corrections;
 - g. First-degree trafficking (manufacturing methamphetamine)⁸ on October 22, 2003 (class A felony), ten years in the Missouri Department of Corrections; and
 - h. Possession of a controlled substance (methamphetamine)⁹ on October 22, 2003 (class C felony), five years in the Missouri Department of Corrections.
2. All of Fair's sentences ran concurrently.

Fair's application for a license

3. Fair signed an application for his license on December 1, 2011. The application was notarized on that same date. The Director received the application on December 28, 2011.
4. On that application, in the section "Background Information," the Director asked: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" Fair checked the "yes" box next to this question. Fair disclosed his eight felony convictions and attached certified court records.
5. The Director issued Fair a license effective on January 1, 2012.

Conclusions of Law

We have jurisdiction under § 621.045.¹⁰ The director argues that Fair's license is subject to discipline under § 385.209.1.¹¹ That statute states, in relevant part:

⁶ § 195.202.2.

⁷ § 195.233.2.

⁸ § 195.222.8(1), RSMo Supp. 2002.

⁹ § 195.202.2.

¹⁰ RSMo Supp. 2012.

¹¹ RSMo Supp. 2012.

The director may ... suspend [or] revoke ... a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant ... has:

(5) Been convicted of any felony[.]

The Director argues that he has cause to discipline Fair's license because Fair was convicted of eight felonies. Fair presented certified court records with his license application, and the Department submitted certified court records with its complaint, showing that Fair pled guilty to eight felonies and was sentenced to prison terms for each of these felonies. A criminal conviction occurs when a judgment has been pronounced upon a verdict.¹² Here, the courts sentenced Fair for each of his felonies. We conclude that Fair was convicted of these felonies and that his eight convictions constitute cause to discipline Fair's license.

Conclusion

We find that the Director has cause to discipline Fair's license under § 385.209.1(5).

SO ORDERED on April 3, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹² *Yale v. City of Independence*, 846 S.W.2d 193, 194 (Mo. 1993).